power of recall which exists in the one case brings with it, to be sure, a continuing responsibility, but no participation, and the misconduct, if such exists, is equally in both cases the mere provision of means. As no valid distinction, then, can be drawn between contracts for bailment and contracts for sale, they should both come under the same rule. The difficulties are obvious which have led the American courts to adopt the general doctrine that all such contracts are valid. Many of the illegal acts thus collaterally aided are mere *mala prohibita*, acts involving slight moral turpitude, or even acts which it is doubtful a court will hold illegal, and it has, therefore, seemed too great a hardship in such cases to deprive one, who has suffered the disadvantages of a contract, of its benefits. Again, goods supplied are often both necessities and useful in an illegal trade, and were contracts for such supplies held invalid, certain persons might have difficulty in buying the necessities of life. On the other hand, if all such contracts are enforced, an easy method of preventing illegal acts by making it difficult to obtain means for their accomplishment is lost. If contracts furnishing necessities, or providing the means for acts which are merely *mala prohibita*, involving no moral turpitude, were held valid, and those collaterally aiding acts of a more serious nature, such as those in the principal case, invalid, the best results, under the circumstances, would be reached. This rule would involve much litigation until its limits were clearly defined. Such inconvenience, however, is a secondary consideration when a broader rule must result either in injustice or in the encouragement of illegal acts.

Reasonableness of Police Regulations. — There exists among some courts an unfortunate tendency to hold legislative action unconstitutional with too little regard for the scope of the power of the legislature and for the principles upon which the judiciary may declare its enactments void. This tendency appears in a recent decision in which the Supreme Court of Illinois held that a statute making it unlawful for any person not a registered pharmacist to compound or sell any medicines or drugs was, in so far as it limited the sale of patent medicines, unconstitutional. *Noel* v. *The People*, Chicago Legal News, November 24, 1900. It was impossible, said the court, to support such an enactment as a valid exercise of the police power, since it furnished no protection to the public health, for, registered pharmacists, not being required to analyze the medicines, would know no more about their properties, and would be no more discriminating in their sale than would other persons. Consequently the statute was said to deprive persons other than registered pharmacists of their liberty and property without due process of law.

That the state legislatures can provide for the protection of the public health, as one of the most important subjects under their so-called police power, is of course acknowledged. If private interests conflict with the legitimate exercise of this power they must give way before it; and, since it is a fundamental precept of civil government that every individual is subject to control in the interests of the many, the sufferer cannot in such case complain of being deprived of his liberty or property without due process of law. The action of the legislature, however, to be legitimate must be reasonable. But the test of reasonableness so far as a court in reviewing the action of the legislature deals with the question,

should not be based on the primary meaning of the word, but is rather in the nature of the test to be applied by a court in reviewing the verdict of a jury; the point to decide is whether or not it is reasonable to consider the action of the legislature reasonable. In other words, a court can declare a statute, passed ostensibly in the interests of the police power, unconstitutional in depriving a person of life, liberty, or property without due process of law, only when it can say that it is arbitrary and capricious, or that it cannot reasonably be calculated to attain its ostensible object. *State* v. *Vandersluis*, 42 Minn. 129. See 1 Thayer's Cases on Constitutional Law, 672.

Applying this test to the statute considered in the principal case, it would seem that the decision is an unjustifiable limitation of the legislature's field of action. It is of course within the police power of the state to regulate the exercise of professions and trades which are closely connected with the public welfare, and thus to prescribe conditions upon the fulfilment of which alone a person can practice such trade or profession. *Dent* v. *West Virginia*, 129 U. S. 114. The court admits that on this basis the statute is valid so far as it deals with the compounding of medicines, but insists that to limit to registered pharmacists the right to sell patent medicines does not tend to protect the public. Yet as a pure question of fact this finding is surely open to doubt. It is well known that many of these medicines contain unwholesome and dangerous ingredients, and that a too free access to them by ignorant people is a menace to their health. A registered pharmacist is one who has satisfied a body of experts that he has the knowledge and skill requisite to the conduct of his business, and that he is a person worthy of trust. It is reasonable to suppose that such a man will be more careful to understand the properties and effects of medicines he sells, and will use greater discrimination in their sale, than would a mere travelling drummer. At any rate, it is difficult to see how any court could hold that it was unreasonable to think that such a regulation could result in promoting the public health, or that it was arbitrary and unjust. In failing to apply this test the court has failed to recognize the true extent of legislative power. Similar statutes have generally been upheld. *State* v. *Forcier*, 65 N. H. 42; *State* v. *Heinemann*, 80 Wis. 253.

RECENT CASES.

AGENCY — ATTORNEY AND CLIENT — DISCONTINUANCE OF ACTION. — The plaintiff and the defendant made a collusive agreement for the discontinuance of a suit without costs, to which the defendant's attorney objected. *Held*, that the court may require the payment of the attorney's costs as a condition of discontinuance. *National Exhibition Co.* v. *Crane*, 54 N. Y. App. Div. 175.

This decision is in accord with the established rule in dealing with such cases. *Swain* v. *Senate*, 2 B. & P. N. R. 99; *Coughlin* v. *New York, etc. R. R. Co.*, 71 N. Y. 443. It is well settled that although an attorney has a lien for his costs on a judgment that has been obtained, he has none on the cause of action itself, and, therefore, if the discontinuance is made in good faith, the attorney can look only to his client for reimbursement. *Randall* v. *Van Wagen*, 115 N. Y. 528. But here there is a dishonest agreement to deprive him of his costs, and of the possibility of acquiring a lien upon the judgment. Consequently, on the ground of unfair practice, and in order to prevent a fraud on one of its officers, the court will allow him to proceed with the action against the defendant, who has joined in the attempted fraud, and if he wins,